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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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FIREMAN'S FUND INS. CO., et al.,

Plaintiffs,

-against-

GREAT AM. INS. CO. OF N.Y., et al.,

Defendants.
-----X

ORDER

10 Civ. 1653 (JPO) (JLC)

JAMES L. COTT, United States Magistrate Judge.

In the Scheduling Order dated November 15, 2011, the Court in setting deadlines for both fact discovery (June 29, 2012) and expert discovery (September 28, 2012) made clear that they were “firm,” and “there would be no extensions absent extraordinary circumstances.” Ignoring these provisions entirely, the parties by letter dated June 5, 2012 now jointly seek a six-month extension of fact discovery until December 29, 2012, and commensurate extensions of the related expert discovery deadlines.

The parties have not set forth “extraordinary circumstances” justifying the relief they seek. The letter requesting the extension chronicles the procedural history of the case, and seeks to justify the extension request by noting that “while the motions [to compel] have been pending,” the parties have identified approximately 25 fact witnesses whose depositions will need to be taken. However, the letter does not mention the fact that, as early as the September 15, 2011 conference with the Court, the parties acknowledged that there were “20 or 25 witnesses” that would need to be deposed (September 15, 2011 Transcript at 15:23), and that eight depositions had already been taken (*id.* at 16:8-9). Thus, the parties have known about

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these depositions for at least nine months, if not before (and not only since April 26, 2012, when the motions to compel were fully submitted).

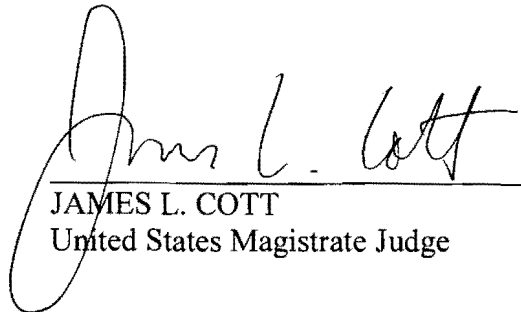
With the Court's permission, among other reasons to give then new counsel for Max an opportunity to get fully up to speed, the setting of a revised schedule was deferred until a conference on November 14, 2011, after which the scheduling order issued. But at the September 15 conference, the Court said explicitly: "Even if we're going to have a settlement conference and if the parties want to have it in December or January, we're not going to stay discovery while that happens." (*Id.* at 28:7-9) (emphasis added). The letter seeking an extension does not explain why not one of these 25 depositions has been taken to date. It has been more than three months since the settlement conference (originally scheduled for January 27 but adjourned to February 27 at the parties' request), so to the extent the parties were waiting to take depositions to see whether the case could be settled, that still does not explain the absence of depositions during this March through June period. Tellingly, counsel for Signal noted at the September 15 conference: "Frankly, I think the facts are on the table, the documents are on the table. I don't think all these fact depositions are going to really change the playing field of what we're talking about in terms of the allegations, particularly those that Max has made against my client." (*Id.* at 22:15-19). How important all of these depositions are thus remains to be seen.

This lawsuit was filed on March 2, 2010. There has never been a stay of discovery. The Court expressed concern about the lengthy discovery schedule the parties had proposed at the September 15, 2011 conference, especially because Judge Kaplan, to whom the case had originally been assigned, had issued a scheduling order dated February 9, 2011 in which all discovery was originally to have been completed by June 20, 2011.

Given this history, the Court is unwilling to grant the requested extension. The Court will extend the fact and expert discovery deadline to October 26, 2012. There will be no further extensions. The parties are directed to contact the chambers of the Honorable J. Paul Oetken no later than November 2, 2012 to schedule a pre-trial conference following the conclusion of discovery.

SO ORDERED.

Dated: June 6, 2012
New York, New York



JAMES L. COTT
United States Magistrate Judge

Copies of this Order have been sent by ECF to all counsel.